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Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-661
Regulation title	Child Care Program
Action title	Revise regulation for programmatic changes and implementation of statewide automation
Date this document prepared	October 15, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

This regulation modifies Child Care Subsidy Program requirements to include procedures made possible by the statewide automation system and to ensure uniform statewide guidance and implementation of the program.

Changes include: new requirements for child care providers; limitation on the fees and rates that will be paid by the program; requirement that applicants be at least 18 years of age; requirement for applicants and recipients to cooperate with the Division of Child Support Enforcement (DCSE) as a condition of eligibility except when good cause for noncooperation has been determined to exist; requirement that appellants refund the cost of services paid during the appeals process if the local department's decision is upheld; change to the time allowed for processing applications; establishment of a standardized process to hear cases of alleged recipient fraud when the Commonwealth chooses not to prosecute; time limitation for receipt of child care for the Fee Child Care services; elimination of the requirement that family co-payments be set at 10 % which allows the Department to implement a co-payment scale based on family size and income; and a requirement that overpayments must be refunded to the Department by the locality.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency or board taking the action, and (3) the title of the regulation.

The State Board of Social Services took final action on 22VAC40-66, Child Care Program, on August 20, 2014.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Statutory authority is the federal Child Care and Development Fund Block Grant of 1990 as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-93) and the Balanced Budget Act of 1997 (Public Law 105-33), as implemented in regulation at 45CFR Parts 98 and 99. Authority also comes from the Food Stamp Act of 1977, as amended through PL 108-269.

State authority comes from §§ 63.2-217, 63.2-319, 63.2-510, 63.2-611, and 63.2-616 of the Code of Virginia. The State Board of Social Services has the authority to promulgate this regulation.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The lack of a statewide automation system for the Child Care Subsidy Program resulted in local variations of program implementation. With implementation of the automated system, the Department is able to initiate changes to ensure consistent program implementation and service provision to families and consistent management of child care provider operations. Centralized management of child care providers who participate in the program provide consistent requirements, procedures, and payment for services provided to families through the program.

The regulation is essential to protecting the health, safety, and welfare of citizens by providing financial assistance for eligible families to help pay the cost of child care so they can work or attend education or training programs.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

Substantive New Provisions:

- A definition of a Level One provider is added.
- All child care providers receiving payment through the program will be required to sign and comply with the terms of their written agreement with the Department covering program participation requirements and standard operating procedures. The written agreement with child care providers provides written notice of requirements for program participation and procedures and requirements for payment for services provided.
- Appeal procedures for resolution of disputes with child care providers are added.
- Reimbursement rates for Level Two providers will be paid a higher maximum reimbursable rate than Level One providers.
- Level Two providers will be paid for specified holidays. Specified Level One providers may also be paid for holidays.
- All recipients will be required to cooperate with the DCSE as a condition of eligibility for the Child Care Subsidy Program. Cooperation with DCSE will allow for additional support and services for families during and after program participation.
- An appellant will be required to repay the amount of all child care payments made on their behalf during an appeal process if the action of the local department of social services is upheld by a Hearings Officer. This change is intended to reduce the number of appeals initiated simply to continue the receipt of services once eligibility ceases.
- An administrative disqualification hearing will be initiated to review allegations of intentional program violations made against a client when the Commonwealth's Attorney has determined that the case does not meet its criteria for prosecution and to clarify that allegations of fraud against child care providers are handled by the Commonwealth's Attorney.
- Overpayments must be refunded to the Department by the locality.
- Receipt of Fee Program benefits will be limited to 72 months statewide.

Substantive Changes to Existing Provisions:

- Language was added to clarify that the financial eligibility scale established by the state cannot exceed the limit set out in 45CFR 98.20
- The types of income to be disregarded in the determination of income eligibility for the program are specified and clarified.
- Locally-set income eligibility scales are eliminated.
- A family's co-payment is changed from 10% of their countable income to a range of 5% to 10% of their countable income based on family size and income.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

There are no disadvantages to the Commonwealth. Advantages to the Commonwealth include:

Centralized management of child care provider program participation and payment of child care providers will assure families and the Department that child care providers comply with all requirements for background checks, training, and payment procedures.

A cap on the amount a child care provider will be paid for the care of children with special needs provides consistent payment for additional services that may be needed over and above those required of providers by law.

A cap on the amount a child care provider will be paid for registration fees and other fees charged by providers allows additional families to receive assistance with the available funds.

The recovery of payments made for services during an appeal process with a local department's action is upheld will provide funds to serve additional eligible families and to reduce the number of appeals filed to prolong receipt of services when eligibility ceases.

A shortened application processing time allows assistance to begin more quickly for families and aligns the program with procedures for the Temporary Assistance for Needy Families and the Supplemental Nutrition Assistance Program.

Limiting the receipt of child care assistance to 72 months for non-TANF and non-Head Start families will allow families to receive assistance through the child's more costly years for care and allow more families to be served.

Use of the Administrative Disqualification Process will allow cases of fraud to be addressed that may not reach the locality's Commonwealth Attorney's threshold for prosecution.

The requirement that overpayments be refunded to the Department by a locality will provide for the repayment of funds that may have to be returned to the federal government.

Issues that could be considered disadvantages to families are:

- The requirement that applicants be at least 18 years of age, which could affect less than 1% of applicants.
- A 72-month limitation could affect approximately 12% of families in the Fee Program.
- Appellant will be required to repay the amount of all payments made during the appeal process when a local department's decision is upheld at appeal.
- A cap on the amount that a provider can charge for care of children with special needs could decrease the number of child care providers willing to accept the approved rate.
- A requirement to cooperate with DCSE as a condition of eligibility could discourage some individuals from applying for assistance.

Issues that could be considered a disadvantage to child care providers are:

- The requirement for a working telephone on-site is an expense for providers who do not currently have a telephone.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
10	The definition of fraud referred to services.	The definition was changed to refer to benefits or services.	The wording was changed for clarity.
10	The definition of intentional program violation referred to the action of a client.	The definition was changed to refer to a recipient.	The wording was changed for clarity.
10	n/a	The definition of a Level One provider was inserted.	The definition was added for clarity.
10	Level Two providers is defined.	Department of Education-approved providers are included in the list of Level Two providers.	The addition corrected an inadvertent omission.
40	The regulation stated that the income eligibility scale is set by the state.	A change was made to clarify that the financial eligibility scale established by the state cannot exceed the limit set out in 45CFR 98.20	The change was made to document that the state limit cannot exceed the maximum income eligibility limit set by the federal government.
40	The regulation stated that certain income would be disregarded when determining eligibility for the program.	A change was made to specifically state what income is disregarded when determining eligibility.	The change was made for clarity.
40	The regulation states that the family co-payment scale is 10% of the family's countable income or the rate set by an approved alternate scale for a locality.	A change was made to incorporate the new co-payment scale based on family size and income with co-payments ranging from 5% to 10% of family's countable income. This change was approved by the State Board of Social Services through an exempt action in June 2014. A change was also made to delete the option for a local alternate co-payment scale.	The change was made to comply with federal regulations and to assure equitable program implementation statewide.
40	The regulation allowed for the option of state-approved alternative income eligibility scales.	A change was made to ensure that income eligibility limits are set by the state.	The change was made to assure that income eligibility is consistently applied statewide and to allow for the automation of the eligibility determination process.

57	The regulation did not specify the process for handling payment disputes between child care providers and the state.	A section was added to clarify that payment disputes may be appealed pursuant to the Virginia Administration Process Act and to clarify that the appeal will be the sole remedy for such disputes.	The change was made to assure that child care providers are aware of their appeal rights.
60	The regulation did not specify the rate differential between Level 1 and Level 2 providers.	The change clarifies that Level 2 providers are paid on a higher maximum rate.	The change was made for clarity.
60	The regulation did not address payments for holidays.	The change clarifies that Level 2 providers and certain Level 1 providers are paid for specified holidays and that other Level 1 providers will be paid for holidays only if care is provided on a holiday.	The change was made to clarify which providers would get holiday pay.
70	The regulation referred to client.	The term "client" was changed to "recipient."	The change was made for clarity.
70	The use of a waiting list for services referenced the fee program.	The term "fee program" was deleted to clarify that no subsidy programs are entitlement programs and that all subsidy programs are limited to the amount of the state's federal award.	The change was made for clarity.
70	The regulation referred to the continuation of services for applicants and recipients who appeal an action within 10 days of the effective date of the Notice of Action.	The term applicant was deleted.	The change was made to clarify that only those appellants who are recipients of services may receive services during an appeal.
80	The regulation referred to the misrepresentation of facts in order to receive services.	The term "benefits, services, or payments" replace the term "services."	The change for made for specificity and clarity.
80	The regulation addressed situations when a referral would be made to the Commonwealth's attorney.	A change was made to clarify that suspected fraud by both providers and households will be referred to the Commonwealth's attorney.	The change was made for clarity.
80	The regulation called for a referral for an administrative disqualification hearing if the Commonwealth Attorney determines a case does not meet the criteria for prosecution.	Wording has been added to indicate that it is the household's case that will be referred for administrative disqualification hearing.	The wording was added for clarification that it is household cases only that will be referred for the administrative disqualification hearing. Provider fraud cases are not managed through the administrative disqualification hearing process.
100	The proposed regulation states that overpayments made as a result of local department error would be repaid with local funds.	Wording was changed to state that overpayments must be returned to the Department by the locality.	The wording was changed to assure that localities refund all overpayments to the state.

Forms	A list of forms was added.	The list of forms has been removed.	The forms are not cited in the regulatory text; therefore, the list is not necessary.
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Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
	22 VAC 40-661-70.G	
Kathy Banks, Falls Church-McLean Children's Center	The proposed 72 month limit on child care subsidy could greatly affect the families in Fairfax County. Many families have more than one child, and would not be able to access child care for the second child, if the first child's care was during the proposed 72 month limit.	The six-year limit for receipt of subsidy child care applies only to families who are receiving assistance through the Fee program. The six years would encompass the months for which child care is authorized for a family but not necessarily consecutive months.
Hugh M. Cannon, Chairman, Fairfax County Child Care Advisory Council		
Kerrie Wilson, Chief Executive Officer, Cornerstones	The proposed regulation is an attempt to cap, however artificially, a program that works best if it is flexible and individualized to each family's particular situation. Although many families receive child care subsidies for fewer than 72 months, there are some working families whose income does not increase sufficiently over time to enable them to afford the cost of care. With the proposed regulation, if a family has used child care for five years and a second child is added to the family, the family will only be eligible for subsidy for one more year.	Limiting receipt of subsidized child care allows more families to receive assistance. There are over 5900 families on wait lists for child care assistance, and there is a finite amount of funds available for the program. The six-year limit allows families with young children to receive assistance until their children are school age, when the cost of care is less expensive.
Courtney Park-Jamborsky, Laurel Learning Center		
Elizabeth McNally, Deputy Director, United Community Ministries		Research conducted by the VDSS Office of Research and Planning indicates that only about 12% of Fee program families receive subsidy assistance for 48 months or more.
Rosemary A. Kendall, PhD Early Childhood Education Consultant and Advocate		
Sharon Zamarra, Fairfax County Community Action Advisory Board	The 72 month limit would create a vicious cycle including, parents losing their job because of no child care; to children being placed in unregulated care, unsafe care or home with siblings too young to provide child care. The 72 month limit of child care subsidy should be amended to allow localities the option of	
Catherine Hassinger, Executive Director Bethany House of Northern Virginia,		

Inc.	implementing a per family limit on receipt of subsidies.	
Glendy Bowman, Chairperson Fairfax County Head Start Policy Council	Limiting the receipt of subsidy will likely result in families using unsafe, unregulated child care for children over the age of six. Parents may leave their school age children at home alone or depend on them to care for a younger sibling.	
Christine Scibetta, Independent Educational Consultant		
Julia Billington, Northern Virginia Association for the Education of Young Children	The Child Care and Development Fund covers children through age 12. It just doesn't make sense to limit child care to only six of those years. It also doesn't make sense to provide some children in a family with adequate care and condemn younger children in the same family to unsafe, unregulated child care or force parents out of the workforce.	
Maria-Isabel Ballivian, Executive Director, ACCA Child Development Center	The best way to eliminate waiting list for subsidies is to increase the amount the Commonwealth budgets for the subsidy, not to remove people from the program before they are ready. Limiting the time for receipt of subsidies may allow more of these families to be served, but families who would lose their child care subsidy may turn to unregulated and possibly unsafe care, or they will be forced to leave the workplace.	
Anne-Marie D. Twohie, Director, Fairfax County Office for Children		
G. Hitchcock & P. Beatty, Northern Virginia Association for the Education of Young Children		
Shannon Steene, Chair Fairfax County Alliance for Human Services	The proposed 72 month restriction would severely limit a mother with multiple small children from reaching self-sufficiency and may propel her back into an abusive relationship once she has reached the 72 month limit as she will no longer have the ability to work without child care.	
	In Fairfax County tuition for one infant ranges from approximately \$14,500 to \$16,000 per year, far out of reach of a family eligible for but denied child care assistance.	

	<p>Continue current policy of allowing a locality the option of imposing a time limit.</p> <p>This proposal won't allow more families to be served; it would allow different families to be served.</p>	
<p>Kathy Banks, Falls Church-McLean Children's Center</p> <p>Hugh M. Cannon, Chairman, Fairfax County Child Care Advisory Council</p> <p>Kerrie Wilson, Chief Executive Officer, Cornerstones</p> <p>Elizabeth McNally, Deputy Director, United Community Ministries</p> <p>Rosemary A. Kendall, PhD Early Childhood Education Consultant and Advocate</p> <p>Sharon Zamorra, Fairfax County Community Action Advisory Board</p> <p>Glendy Bowman, Chairperson Fairfax County Head Start Policy Council</p> <p>Christine Scibetta, Independent Educational</p>	<p>22 VAC 40-661.40.B</p> <p>Local alternate fee scales provide localities the ability to meet the specific needs of their families and consider the economic challenges within their own communities. Use of the proposed state fee scale would increase the minimum co-payment amount for parents in Fairfax County from 2.5% to 5%. Loss of the local fee scale will negatively impact the most vulnerable, at-risk families in our community.</p> <p>For over 15 years Fairfax County has operated under a waiver to use a local sliding fee scale, rather than the state fee scale, to determine parent copayments for child care. The Fairfax County fee scale works because it best meets the needs of families in Fairfax and takes into consideration the economic challenges specific to living in this area. If the proposed state fee scale is implemented, families with the lowest income will change from paying 2.5% to 5% of their gross income, a 100% increase in their copayment. Localities should be allowed to continue the use of alternate fee scales to ensure they are able to meet the needs of families in their communities.</p>	<p>The proposed amendments will enable the Department to implement a co-payment scale based on family size and income as required by federal regulations, and to allow for periodic adjustments due to changes in the federal poverty guidelines.</p> <p>It will also allow the Department to initiate the changes necessary to insure consistent application of program guidance and consistent utilization of state and federal funds regardless of the locality in which a client lives.</p> <p>This change would not prohibit localities that have established local co-payment goals that exceed state practices from utilizing local funds to achieve these local goals.</p>

<p>Consultant</p> <p>Julia Billington, Northern Virginia Association for the Education of Young Children</p> <p>Maria-Isabel Ballivian, Executive Director, ACCA Child Development Center</p> <p>Anne-Marie D. Twohie, Director, Fairfax County Office for Children</p> <p>G. Hitchcock & P. Beatty, Northern Virginia Association for the Education of Young Children</p> <p>Shannon Steene, Chair Fairfax County Alliance for Human Services</p>	<p>The cost of living throughout the state of Virginia is not uniform. Fairfax County currently utilizes its own sliding fee scale with families paying a minimum of 2.5% of their gross income. The proposed fee scale will raise the rates on our most vulnerable residents by 100%. Fairfax County should have permission to continue use of their alternate fee scale.</p> <p>Sliding fee scales are positive strategies for supporting families as they work toward self-sufficiency, considering family income and allowing fees to rise as income rises. However, the state should continue to allow the use of an alternate, local fee scale in lieu of requiring use of the state-wide fee scale.</p>	
<p>Kerrie Wilson, Chief Executive Officer, Cornerstones</p> <p>Elizabeth McNally, Deputy Director, United Community Ministries</p> <p>Rosemary A. Kendall, PhD Early Childhood Education Consultant and Advocate</p> <p>Christine Scibetta,</p>	<p>22 VAC40-661-70.A (Age of Applicant)</p> <p>Child Care subsidies have enabled teen parents to stay in school, complete their high school education, and enter the workforce. A local option to support serving teen parents will enable localities to continue beneficial programs working with teen mothers.</p> <p>Subsidy is a key component of the safety net that ensures that teen parents and their children are safe and well.</p>	<p>Eligible teen parents will continue to receive services provided in the Child Care Subsidy Program. This amendment is not intended to limit access to program services, but rather to ensure that all applicants and recipients are of legal age and can be held accountable for the contractual obligations required in the Child Care Subsidy Program.</p> <p>Parents are financially responsible for their minor children, and therefore the agency proposes to require that the parent of the minor in need of child care services make an application for the family.</p>

<p>Independent Educational Consultant</p> <p>Julia Billington, Northern Virginia Association for the Education of Young Children</p> <p>Maria-Isabel Ballivian, Executive Director, ACCA Child Development Center</p> <p>Anne-Marie D. Twohie, Director, Fairfax County Office for Children</p> <p>G. Hitchcock & P. Beatty, Northern Virginia Association for the Education of Young Children</p> <p>Shannon Steene, Chair Fairfax County Alliance for Human Services</p>		
<p>Kerrie Wilson, Chief Executive Officer, Cornerstones</p> <p>Elizabeth McNally, Deputy Director, United Community Ministries</p> <p>Rosemary A. Kendall, PhD Early Childhood Education Consultant and</p>	<p>22 VAC 40-661-70.A (DCSE)</p> <p>Many families would benefit financially or otherwise from the requirement to register and cooperate with the Division of Child Support Enforcement (DCSE), and it would address some concerns about shortfalls in program funding to meet all the needs. However, there are instances where the mandated registration can unintentionally hurt the family or put them at risk of abuse or loss of other rights. Parents may fear reprisal from the non-custodial parent and in cases</p>	<p>The TANF program already requires recipients to cooperate with DCSE. Further, the VDSS Office of Research and Planning reports that 60%-68% of families receiving subsidized child care are current or past TANF Program recipients, which requires cooperation with DCSE as a condition of eligibility.</p> <p>Support and services received from DCSE, including the establishment of paternity and support orders, will benefit families until a child reaches the age of 18, while eligibility for Child Care subsidy ends at age 13 for most children.</p> <p>An exception will be made in instances when it is determined that good cause for</p>

Advocate	where parents have an informal support arrangement; this requirement will change that relationship and may force parents into adversarial roles. Language and cultural barriers may impede a client's ability to comply.	noncooperation exists.
Catherine Hassinger, Executive Director Bethany House of Northern Virginia, Inc.		
Glendy Bowman, Chairperson Fairfax County Head Start Policy Council	Requiring registration with DCSE, rather than encouraging and supporting registration, may, however, discourage families from applying for subsidized child care services. In cases of domestic violence parents may be fearful of registering with DCSE, which would preclude them from accessing affordable child care. Families may view this requirement as intrusive and burdensome.	
Christine Scibetta, Independent Educational Consultant	Families should be encouraged to register with DCSE, instead of making this a condition of eligibility.	
Julia Billington, Northern Virginia Association for the Education of Young Children	Requiring families to register and cooperate with DCSE will place victims of domestic violence and their dependent children at risk from an abusive partner. Fear that an abuser may locate them will further isolate these vulnerable families	
Maria-Isabel Ballivian, Executive Director, ACCA Child Development Center Anne-Marie D. Twohie, Director, Fairfax County Office for Children	A study released by Child Care Matters (2004) found that this kind of requirement was "preventing income eligible families from applying for child care subsidy, hurting enrollments in regulated early education programs, and undermining a parent's ability to access safe and quality child care."	
G. Hitchcock & P. Beatty, Northern Virginia Association for the Education of Young Children	The proposed requirements for establishing and documenting good cause are stringent and may be difficult to meet. Localities should be given the	
Shannon Steene, Chair Fairfax County Alliance for Human Services		

	option of requiring registration with DCSE, which would better ensure that localities are able to meet the needs of families in their communities.	
<p>Rosemary A. Kendall, PhD Early Childhood Education Consultant and Advocate</p> <p>Julia Billington, Northern Virginia Association for the Education of Young Children</p> <p>G. Hitchcock & P. Beatty, Northern Virginia Association for the Education of Young Children</p>	<p>22 VAC 40-661-70.E The reduction in application processing time from 45 days to 30 days will make a positive difference to families who have secured employment and need reliable child care.</p>	The Department concurs with this comment.
<p>Rosemary A. Kendall, PhD Early Childhood Education Consultant and Advocate</p> <p>Christine Scibetta, Independent Educational Consultant</p> <p>Julia Billington, Northern Virginia Association for the Education of Young Children</p> <p>G. Hitchcock & P. Beatty, Northern Virginia Association for the Education of Young Children</p>	<p>22 VAC 40-661-60.A (Subsidy reimbursement rates are already so low; a cap on the payment rate for children with special needs will further reduce the supply of care for children with special needs. Maintain current payment rates for subsidy children with special needs. Child care for children with special needs is in limited supply and more expensive.</p>	The Department is proposing this amendment in order to bring consistency to the authorization and payment for care for children with special needs, and to permit programmatic oversight and control of costs.

All changes made in this regulatory action		

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10		The section provides definitions.	<p>The term "ADH" is added and defined.</p> <p>The term "Cooperate with the Division of Child Support Enforcement" is added and defined.</p> <p>The term "DCSE" is added and defined.</p> <p>The term "Fee program" is added and defined.</p> <p>The term "Fraud" is amended to refer to both benefits and services.</p> <p>The term "FSET" is deleted and replaced with the term "SNAPET" which is defined.</p> <p>The term "Good Cause" is clarified.</p> <p>The term "in loco parentis" is added and defined.</p> <p>The term "Intentional program violation" is added and defined.</p> <p>The term "Level two provider" is added and defined.</p> <p>The title "United State Department of Health and Human Services" is clarified to read "U.S. Department of Health and Human Services."</p> <p>The term "noncooperation with DCSE" is added and defined.</p> <p>The term "Provider" is added and defined.</p> <p>The term "Subsidy program" is clarified.</p> <p>The definitions are added, deleted or changed to support new processes or for clarification. One term, "FSET," is deleted and replaced by the new federal term, "SNAPET," for the same program.</p>
30		The section outlines the various categories of care within the program.	<p>The explanation of Fee child care is clarified to explain who can receive Fee child care assistance and to clarify the term "to the extent funding is available."</p> <p>The terms "Food Stamp" and "FSET" are changed to "SNAP" and "SNAPET" to comport with the federal change of terminology from food stamp and food stamp employment and training to the Supplemental Nutrition Assistance Program and</p>

			Supplemental Nutrition Assistance Program Education and Training (SNAPET).
40		Subsection A establishes that the Department is responsible for determining income eligibility scale and the variables to be considered.	A change was made to clarify that the financial eligibility scale established by the state cannot exceed the limit set out in 45CFR 98.20. A change was made to specifically state what income is disregarded when determining eligibility.
40		Subsection B establishes that the Department is responsible for setting the copayment scale who will or will not be required to pay a copayment, and how the copayment is to be calculated.	The reference to the family copayment as 10% of their gross monthly income is replaced with the new copayment scale based on family size and income, as required by federal regulations and passed by the State Board of Social Services in June 2014.
40	70 G	Subsection C provides localities with the option to set a five year limit on the receipt of Fee program services and clarifies that any months a family receives Transitional child care services do not count toward the limit.	The local option is removed and a statewide limit of 72 months on the receipt of Fee child care assistance is established in Section 70. The limit on the receipt of assistance will provide services during the mostly costly years of care for young children, and allow additional families from the waiting list to begin receiving assistance.
40	70 H	Subsection D requires local departments of social services to maintain a waiting list for Fee program services and sets out how it is to be developed and approved.	Local departments are required to screen and add applicants for the waiting list, if the family so chooses. The waiting list process is now part of the automated system for child care assistance.
57		The section outlines requirements for child care providers who want to be eligible to receive payments through the program.	<p>The specific cost of child care training available through the Department is changed to a "nominal fee," to allow for a cost change, should one become necessary.</p> <p>New sections are added to require all child care providers participating in the subsidy program to sign and comply with an agreement established by the Department based on the provider's level of regulatory oversight, and to have a working telephone at each site where care is provided. The agreement with providers affords standard operating procedures and payment policies to assure providers are aware of program requirements. A working telephone at each child care site is required to ensure that help can be called in an emergency and that parents will be able to contact the provider whenever their child is in care. A provision is added to make providers aware of their appeal rights and that disputes may be appealed via the Administrative Process Act.</p>

60		The section outlines the establishment and implementation rules for payment for child care services, including payment for children with special needs, in-home care, registration fees.	A maximum payment for care for children with special needs is established to ensure that services are uniformly covered throughout the state. Clarification is added that payment is made based on the authorized amount of care. A change is made to specify that, as a result of automation, centralized payments are made by the state rather than by each local department. Centralized and automated payments allow for providers to be paid twice a month and to receive one payment for children from multiple localities. It also provides statewide payment information for all providers who participate in the program. Negotiated fees are eliminated to allow for automation of payments and rates. It is clarified that payment to out of state providers is based on the payment rate for the locality in which the local department of social services authorizing the care is used. A change is made to set a maximum payment amount for registration fees and to limit the payment of registration fees to level two providers only. Payment of certain fees to level two providers and specified Level one providers recognizes their higher level of regulatory oversight and assures that registration fees are consistently paid throughout the state. Extraneous language regarding the total cost of care is eliminated to clarify the intent of the program that all services except the registration fee must be included in a single charge and that charge may not exceed the maximum reimbursable rate.
70		The section outlines the case management process, including the application process, service planning, due process, reassessment, beginning date of payment, parental responsibilities, termination of services, and waiting list procedures.	Clarification is added that parents who are TANF recipients do not have to submit a separate application for child care services and to specify that applicants must be at least 18 years of age. Parents of children under the age of 18 are still responsible for their support and therefore, are responsible for applying for services for them and to have their income counted toward eligibility determination. A new requirement is added to require applicants and recipients to cooperate with DCSE as a condition of eligibility, unless it is determined that good cause for noncooperation exists. Receipt of child support will increase the family's income and will be available to the child after the child turns 13 years old, the maximum age for program participation in most cases. A new provision is added to require the

			recipient to repay funds paid on their behalf during the appeal process if the local department's action is upheld. This provision is intended to reduce the number of appeals to prolong receipt of services when eligibility ceases and will make additional funds available to serve eligible families. The application processing time is reduced from 45 to 30 days to provide assistance to families more quickly and to align with processing timeframes for the TANF, SNAP and Energy Assistance programs. A 72-month eligibility limit per family is added.
80		The section outlines procedures and actions to be taken in the event of fraud and nonfraud overpayments.	The process for administrative disqualification from the program is added for child care recipients if there is clear and convincing evidence that fraud was committed, but the situation does not meet attorney for the Commonwealth criteria for prosecution. Disqualification for an intentional program violation is added as a reason for disqualification from the program. The administrative disqualification process and resulting disqualification from program participation will enable the program to take action when an intentional program violation is committed, but may not meet the dollar level established by some Commonwealth Attorneys for prosecution. The term "vendor" is changed to "provider" for clarification. The requirements for nonfraud overpayments are moved to new section 100.
n/a	100	n/a	This new section provides that neither parents nor providers will be disqualified from program participation as long as a repayment schedule is entered into and payments made according to schedule. It also requires that overpayments must be refunded to the Department by the locality.

Project 2776 - Final

DEPARTMENT OF SOCIAL SERVICES

**Revise regulation for programmatic changes and implementation of statewide
automation**

22VAC40-661-10. Definitions.

~~The following words and [terms~~ Terms] when used in this chapter shall have the following meanings unless the context indicates otherwise:

"ADH" means an administrative disqualification hearing, an impartial review by a state hearing officer of [~~an individual's~~ a recipient's] actions involving an alleged intentional program violation for the purpose of determining if the individual did or did not commit an intentional program violation.

"Applicant" means a person who has applied for child care services and the disposition of the application has not yet been determined.

"Background checks" means a sworn statement or affirmation as may be required by the Code of Virginia, the Criminal History Record Check, the Sex Offender and Crimes Against Minors Registry Check, and the Central Registry Child Protective Services check.

"Child care services" means those activities that assist eligible families in the arrangement for or purchase of child care for children for care that is less than a 24-hour day. It also means activities that promote parental choice, consumer education to help parents make informed choices about child care, activities to enhance health and safety standards established by the state, and activities that increase and enhance child care and early childhood development resources in the community.

"Child protective services" means the identification, receipt and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child support services" means any civil, criminal or administrative action taken by the Division of Child Support Enforcement to locate parents, establish paternity, and establish, modify, enforce, or collect, and disburse child support, or child and spousal support.

"Children with special needs" means children with documented developmental disabilities, mental retardation, emotional disturbance, sensory or motor impairment, or significant chronic illness who require special health surveillance or specialized programs, interventions, technologies, or facilities.

"Cooperate with the Division of Child Support Enforcement" means that an applicant or recipient of child care subsidy services must provide the information required by the Division of Child Support Enforcement to locate an absent parent, establish paternity, or establish a support order, unless a basis for good cause for noncooperation is determined by the program.

"Copayment" means a specific fee that is a portion of a household's income that is contributed toward the cost of child care.

"DCSE" means the Division of Child Support Enforcement, the division of the Department of Social Services responsible for locating absent parents; establishing paternity; and establishing, modifying, enforcing, collecting, and disbursing child support, or child and spousal support.

"Department" means the State Department of Social Services.

"Family" means any individual, adult, or adults and/or children related by blood, marriage, adoption, or an expression of kinship who function as a family unit.

"Federal poverty guidelines" means the income levels by family size, determined by the federal Department of Health and Human Services, used as guidelines in determining at what level families in the country are living in poverty.

"Fee" means a charge for a service and may include, but is not limited to, copayments, charges above the maximum reimbursable rate, or charges for registration, activities or transportation.

"Fee program" means a category in the child care subsidy program that assists low income, non-TANF families with child care services.

"Fraud" means the knowing employment of deception or suppression of truth in order to receive [benefits or] services one is not entitled to receive.

~~"FSET" means Virginia's Food Stamp Employment and Training Program, a multi-component employment and training program that provides Job Search, Job Search Training, Education, Training, and Work Experience to certain Food Stamp recipients.~~

"Good cause" means a valid reason why a parent in a two-parent household, ~~or any other person under Virginia law responsible for the support of the children~~ cannot provide the needed child care, or a valid reason why a parent will not be required to register with the Division of Child Support Enforcement.

"Head Start" means the comprehensive federal child development programs that serve children from birth through age five, pregnant women, and their families (as established by the Head Start Act (42 USC § 9840)).

"Income eligible" means that eligibility for subsidy is based on income and family size.

"In-home" means child care provided in the home of the child and parent when all the children in care reside in the home and the provider does not live in the home.

"In loco parentis" means an adult with whom the child is living who has assumed responsibility for the day-to-day care and supervision of the child.

"Intentional program violation" means fraudulent action by a [~~client-recipient~~] for the purpose of establishing or maintaining the family's eligibility for child care subsidy, increasing or preventing a reduction in the amount of the subsidy, or causing an improper payment to be made by intentionally giving false or misleading information.

["Level one provider" means a child care provider that is unlicensed or unregulated.]

"Level two provider" means a child care provider who is licensed by the Department of Social Services, [approved by the Department of Education,] approved by a licensed family day system, approved under local ordinance according to § 15.2-914 of the Code of Virginia, or federally approved.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Maximum reimbursable rate" means the maximum rate paid for child care services through the subsidy program that is established by the department and set out in the state Child Care and Development Fund plan filed with the ~~United States~~ U.S. Department of Health and Human Services.

"Noncooperation with DCSE" means failure of an applicant or recipient to provide the local department or the Division of Child Support Enforcement with information required to establish paternity or an order for child support, without good cause.

"Nonfraud overpayment" means an overpayment that was caused by the local department, or by an inadvertent household or provider error.

"Parent" means the primary adult caretaker or guardian of a child.

"Provider" means a person, entity, or organization providing child care services.

"Resource and referral" means services that provide information to parents to assist them in choosing child care, and may include assessment of the family's child care needs, collection and maintenance of information about child care needs in the community, and efforts to improve the quality and increase the supply of child care.

"Service plan" means the written, mutually agreed upon activities and responsibilities between the local department and the parent in the provision of child care services.

"SNAP" means the Supplemental Nutrition Assistance Program, a program administered by the United States Department of Agriculture to reduce hunger and increase food security.

"SNAPET" means Supplemental Nutrition Assistance Program Employment and Training, which provides job search, job search training, education, training, and work experience to nonpublic assistance SNAP recipients.

"Subsidy programs" program means the department ~~programs~~ program that ~~assist~~ assists low income eligible families with the cost of child care, ~~including the TANF child care program and the income eligible child care programs.~~

"TANF assistance unit" means a household composed of an individual or individuals who meet all categorical requirements and conditions of eligibility for TANF.

"TANF capped child" means a child who the TANF worker has determined ineligible for inclusion in the TANF assistance unit because the child was born more than 10 full months after the mother's initial TANF payment was issued.

"Temporary assistance for needy families" or "TANF" means the program administered by the department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Transitional child care" means the program that provides child care subsidy to eligible former TANF recipients after the TANF case closes.

22VAC40-661-30. Child care programs.

Child care subsidy, to the extent of available funding, is provided through the following programs:

1. TANF Child Care Program. Child care subsidy and services are made available to recipients of TANF. TANF child care includes needed care for the TANF capped child.

These services are also provided to:

a. A child who receives Supplemental Security Income (SSI), if the parent is on the TANF grant and if the child would have been in the TANF assistance unit were it not for the receipt of SSI, or

b. Children who are not in the TANF assistance unit but who are financially dependent upon the parent who is in the TANF assistance unit.

2. Income eligible child care programs.

a. Transitional child care. Child care subsidy and services are made available to eligible children of former TANF recipients to support parental employment if the TANF case is closed, and they are found income eligible.

b. Head Start child care. Head Start child care subsidy and services are made available to eligible Head Start enrolled children. The program is for extended day and extended year child care beyond times covered by federally funded Head Start core hours.

c. Fee child care. Fee child care subsidy and services are made available to children in eligible low income families who are not receiving TANF, not in the Head Start

Program, and who meet the eligibility criteria for child care, to the extent of available funding is available.

3. ~~Food Stamp~~ SNAP child care. Child care subsidy and services are made available to children of parents in Virginia's ~~FSET~~ SNAPET program to allow participation in an approved activity.

22VAC40-661-40. State income eligible scale and copayments.

A. State income eligible scale. The department establishes the scale for determining financial eligibility for the income eligible child care programs. Income eligibility is determined by measuring the family's income and size against the percentage of the federal poverty guidelines for their locality [not to exceed 85% of the state median income (effective 8/15/2014)]. Income to be counted in determining income eligibility includes all earned and unearned income received by the family except certain disregarded income: Supplemental Security Income; TANF benefits; general relief; food stamp benefits; child support paid to another household; earnings of a child under the age of 18 years; garnished wages; earned income tax credit; lump sum child support payments; and scholarships, loans, or grants for education except any portion specified for child care [Supplemental Security Income; TANF benefits, including TANF match payments; Transitional payments of \$50.00 per month to former VIEW participants; Diversionary Assistance payments; general relief; SNAP benefits; value of USDA donated food; benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965; value of supplemental food assistance under the Child Nutrition Act of 1996 and lunches provided under National School Lunch Act; child support paid to another household; earnings of a child under the age of 18 years; garnished wages; earned income tax credit; lump sum child support payments; scholarships, loans, or grants for education except any portion specified for child care; Basic Allowance for Housing for military personnel living on base; Clothing Maintenance Allowance for military personnel; payment to AmeriCorps volunteers; tax refunds;

lump sum insurance payments; monetary gifts for one time occasions or normal annual occasions; payments made by non-financially responsible third parties for household obligations, unless payment is made in lieu of wages; loans or money borrowed; money received from sale of property, earnings less than \$25.00 a month; capital gains; withdrawals of bank deposits; GI Bill benefits; reimbursement, such as for mileage; foreign government restitution payments to Holocaust survivors; payments from the Agent Orange Settlement Fund or any other fund established for settlement of Agent Orange product liability litigation; and monetary benefits provided to the children of Vietnam Veterans as described in 38 USC 1823 (c).

~~Unless a local alternate scale is approved, the income eligibility scale established by the department must be used for the transitional, Head Start and fee programs. Proposed alternate sliding scales must be approved by the department prior to submission to the local board of social services.}~~

B. Copayments. Copayments are established by the department. All families receiving child care subsidy have a copayment responsibility of 10% of their countable monthly income or the copayment established by an approved local alternate scale [ranging from 5.0% to 10% of the family's income, taking family size and income into account, (effective 8/15/2014)] except that families whose gross monthly income is at or below the federal poverty guidelines who are recipients of TANF, participants in the FSET SNAPET program, or families in the Head Start program will have no copayment. [The family's copayment will be calculated using the following chart: (effective 8/15/2014)

Monthly Income Levels by Percent of Poverty and Household Size																					
Number of Household Members																					
	2	3	4	5	6	7	8	9 ¹	10 ¹	11 ¹	12 ¹	13 ¹	14 ¹	15 ¹	16 ¹	17 ¹	18 ¹	19 ¹	20 ¹	Copayment Percentage	
Percent of Poverty																					
0-100%	\$0 \$1,293	\$0 \$1,628	\$0 \$1,963	\$0 \$2,298	\$0 \$2,633	\$0 \$2,968	\$0 \$3,303	\$0 \$3,638	\$0 \$3,973	\$0 \$4,308	\$0 \$4,643	\$0 \$4,978	\$0 \$5,313	\$0 \$5,648	\$0 \$5,983	\$0 \$6,318	\$0 \$6,653	\$0 \$6,988	\$0 \$7,323	5.0%	
>100% - ≤125%	\$1,284 \$1,616	\$1,629 \$2,035	\$1,964 \$2,454	\$2,299 \$2,872	\$2,634 \$3,291	\$2,968 \$3,710	\$3,304 \$4,129	\$3,639 \$4,547	\$3,974 \$4,966	\$4,309 \$5,385	\$4,644 \$5,804	\$4,978 \$6,222	\$5,314 \$6,641	\$5,649 \$7,060	\$5,984 \$7,479	\$6,319 \$7,897	\$6,654 \$8,316	\$6,988 \$8,733	\$7,324 \$9,154	6.0%	
>125% - ≤150%	\$1,617 \$1,939	\$2,036 \$2,442	\$2,455 \$2,944	\$2,873 \$3,447	\$3,292 \$3,949	\$3,711 \$4,452	\$4,130 \$4,954	\$4,548 \$5,457	\$4,967 \$5,959	\$5,386 \$6,462	\$5,805 \$6,964	\$6,223 \$7,467	\$6,642 \$7,969	\$7,061 \$8,472	\$7,480 \$8,974	\$7,898 \$9,477	\$8,317 \$9,978	\$8,733 \$10,414	\$9,155 \$10,984	7.0%	
>150% - ≤160%	\$1,940 \$2,068	\$2,443 \$2,604	\$2,945 \$3,140	\$3,448 \$3,676	\$3,950 \$4,212	\$4,453 \$4,748	\$4,955 \$5,284	\$5,458 \$5,820	\$5,960 \$6,356	\$6,463 \$6,892	\$6,965 \$7,428	\$7,468 \$7,964	\$7,970 \$8,500	\$8,473 \$9,036	\$8,975 \$9,572	\$9,478 \$10,109	\$9,980 \$10,644	\$10,483 \$10,914	\$10,985 \$11,106	8.0%	
>160% - ≤185%	\$2,069 \$2,392	\$2,605 \$3,011	\$3,141 \$3,631	\$3,677 \$4,251	\$4,213 \$4,871	\$4,749 \$5,490	\$5,285 \$6,110	\$5,821 \$6,730	\$6,357 \$7,350	\$6,893 \$7,969	\$7,429 \$8,589	\$7,965 \$9,209	\$8,501 \$9,829	\$9,037 \$10,149	\$9,573 \$10,340	\$10,109 \$10,531	\$10,644 \$10,723	\$10,914 \$10,934	\$11,106 \$11,109	9.0%	
>185% - ≤250%	\$2,393 \$3,232	\$3,012 \$4,069	\$3,632 \$4,907	\$4,252 \$5,744	\$4,872 \$6,582	\$5,491 \$7,419	\$6,111 \$8,257	\$6,731 \$9,000	\$7,351 \$9,191	\$7,970 \$9,383	\$8,590 \$9,574	\$9,210 \$9,766	\$9,830 \$9,957	\$10,149 \$10,149	\$10,340 \$10,340	\$10,531 \$10,531	\$10,723 \$10,723	\$10,934 \$10,934	\$11,109 \$11,109	10%	
100% of Poverty- FFY 2014	\$1,293	\$1,628	\$1,963	\$2,298	\$2,633	\$2,968	\$3,303	\$3,638	\$3,973	\$4,308	\$4,643	\$4,978	\$5,313	\$5,648	\$5,983	\$6,318	\$6,653	\$6,988	\$7,323		
85% of SMI Published on 05/15/13	\$4,340	\$5,361	\$6,383	\$7,404	\$8,425	\$9,417	\$8,808	\$9,000	\$9,191	\$9,383	\$9,574	\$9,766	\$9,957	\$10,149	\$10,340	\$10,531	\$10,723	\$10,934	\$11,109		
¹ Income level not to exceed 85% of state median income or 250% of poverty. Note: Virginia state median income posted in the Federal Register, Vol. 78, No. 94, Wednesday, May 15, 2013, pages 28597-28598. Note: FY 2014 Poverty Guidelines - Federal Register, Vol. 78, No. 16, Thursday, January 24, 2013, pages 5182-5183. For a household greater than 8, add \$4,020 for each additional person.]																					

¹Income level not to exceed 85% of state median income or 250% of poverty.

Note: Virginia state median income posted in the Federal Register, Vol. 78, No. 94, Wednesday, May 15, 2013, pages 28597-28599.

Note: FY 2014 Poverty Guidelines - Federal Register, Vol. 78, No. 16, Thursday, January 24, 2013, pages 5182-5183. For a household greater than 8, add \$4,020 for each additional person.]

~~C. Five year limit. Localities may limit receipt of fee child care program subsidies to a maximum of 60 months (five years). Receipt of transitional child care does not count toward the five years.~~

~~D. Waiting list. Local departments must have a waiting list policy for the fee child care program. Prior receipt of TANF must not be a reason for preferential placement on a waiting list. Proposed policy for a waiting list must be approved by the department prior to submission to the local board of social services. A waiting list policy must assure that decisions are made uniformly.~~

22VAC40-661-57. Provider requirements.

A. Providers who participate in the subsidy program must be at least 18 years of age, obtain background checks as required by the regulations for their type of child care, and participate in annual training. Providers and other individuals required to have background checks according to § 63.2-1725 of the Code of Virginia who are not otherwise governed by another state regulation requiring background checks shall obtain background checks as defined in this regulation.

B. Background checks for regulated child care providers and local department approved child care providers remain valid according to the provisions of the regulations for their type of child care. Background checks for employees of certified preschools or nursery schools and unregulated family day home providers that participate in the child care subsidy program will remain valid for three years as long as the provider provides continuous services under the child care subsidy program. For any other individual who is required to have background checks according to § 63.2-1725 of the Code of Virginia, the background checks will remain valid for three years as long as the individual maintains continuous employment, residence or volunteer status with that provider.

C. Training requirements will consist of current certification in first aid and cardiopulmonary resuscitation (CPR) as appropriate for the age for the children in care, the cost of which will be borne by the provider. Four hours of skills training will also be required annually. Skills training is available through the department ~~at for a cost of less than \$20 per participant~~ nominal fee.

D. All providers who participate in the subsidy program must sign a department-approved agreement that will be based on the level of regulation of the provider. The provider's signature confirms his agreement to comply with the terms of the agreement, including payment processes, absences, and attendance tracking.

E. All providers who participate in the subsidy program must have a working telephone at each site at which child care is provided, as required by the department-approved agreement.

[F. Disputes between the provider and VDSS regarding the payment for services rendered, including decisions made pursuant to the department-approved agreement, or the finding of fraud committed by the provider, may be appealed by the provider pursuant to the Virginia Administrative Process Act (Va. Code § 2.2-4000 *et seq.*). This shall be the sole remedy for such disputes.]

22VAC40-661-60. Determining payment amount.

A. Maximum reimbursable rates.

1. The department will establish maximum reimbursable rates for child care subsidies for all localities in the state by type of care.
2. For children with special needs, payment over the maximum reimbursable rate is allowed when this is appropriate as determined by the local department. The maximum reimbursable rate for children with special needs may not exceed twice the reimbursable rate for care of children who do not have special needs.
3. Providers will be paid for the amount of care approved up to the maximum reimbursable rate of the jurisdiction in which the provider is located. ~~Local departments must~~ The department will pay the rates and fees providers charge the general public, up to the maximum reimbursable rate, ~~or a negotiated rate that is lower.~~ [Level two providers will be paid a higher maximum reimbursable rate established by the department.]

4. For out-of-state providers, the ~~local department~~ maximum reimbursable rate of the locality in which the local department is located is used.

5. Parents who choose to place a child in a facility with a rate above the maximum reimbursable rate are responsible for payment of any additional amount, unless the local department elects to pay the additional amount out of local funds.

B. In-home care. For in-home child care, payment must be at least minimum wage, but not more than the maximum reimbursable rate for the number of children in care.

C. Registration fee. A single annual registration fee, if charged, will be paid to level two providers [only] . The registration fee may not exceed \$100. Transportation fees are paid only when the transportation services are provided by the provider. The total cost of care, excluding the single annual registration fee, ~~but including special programs, other fees and transportation,~~ must not exceed the maximum reimbursable rate and must be identified as one child care cost.

[D. Up to ten holidays identified in subsection 7.6 of the department-approved provider agreement will be paid to level two providers. Level one certified pre-schools, religious exempt, and voluntary registered providers may be paid for holidays, according to provisions in the department-approved vendor agreement. All other level one providers will not receive payment for holidays unless services are provided on that day.]

22VAC40-661-70. Case management.

A. Application and assessment. Parents who are not receiving TANF and who are at least 18 years of age and who wish to request child care services are required to sign an application and cooperate with an assessment by the local department. Consumer education, including the selection and monitoring of child care, must be provided to parents to assist them in gaining needed information about child care services and availability of providers. As a condition of eligibility, all applicants and recipients must cooperate with the Division of Child Support

Enforcement unless the subsidy program determines that good cause exists for their failure to do so.

B. Service planning. Child care workers must complete a written service plan for each child care case. The service plan outlines the mutually agreed upon activities and responsibilities between the local department and the parent in the provision of child care services.

C. Due process. Applicants and recipients will be afforded due process through timely written notices of any action deciding or affecting his eligibility for services or copayment amount. Such written notice shall include the reason for the action and the notice of appeal rights and procedures, including the right to a fair hearing if the applicant or recipient is aggrieved by the local department's action or failure to act on an application. If a [client recipient] requests an appeal within 10 days of the effective date of the notice of action, child care services will continue until a decision is rendered by a hearing officer. If the decision of the local department is upheld by the hearing officer, the [client recipient] must repay the amount of services paid during the appeal process.

D. Reassessment. Local departments will make regular contacts with a member of the case household or the provider. The purpose of these contacts is to evaluate whether the child care services authorized are meeting the needs of the child and the parent.

E. Beginning date of service payment.

1. The beginning date of service payment is the date the signed application is received in the local department if the family is determined eligible within ~~45~~ 30 days.
2. If the determination is made more than ~~45~~ 30 days after the signed application is received, services may begin only on the date eligibility is actually determined, except in the case of administrative delay.

3. Administrative delay is when either the parent or provider does not provide needed information for eligibility purposes to the local department within the ~~45~~ 30 days due to circumstances beyond their control.

4. Payment cannot be made to licensed providers prior to the effective dates of their initial licenses.

F. Parental responsibilities.

1. Parents must be informed of their responsibility to report changes that could affect their eligibility. These changes must be reported to the local department within 10 calendar days. Parents must be informed that failure to report required changes may result in case closure, repayment of child care costs, or prosecution for fraud.

2. Parents must be informed of their responsibility to pay all fees owed. Parental failure to pay fees may result in case closure.

G. Termination. Local department termination of child care services must be planned jointly with the parent and provider. Adequate documentation supporting the reasons for termination must be filed in the case record. Eligibility in the fee program is limited to a total of 72 months per family. Receipt of assistance in any other category does not count toward the 72-month limitation.

H. Waiting list. When sufficient funds are not available [~~in the fee program~~], local departments of social services must screen applicants for potential eligibility and place them on the department's waiting list if the family chooses.

22VAC40-661-80. Fraud.

A. Fraud.

1. When it is suspected that there has been a deliberate misrepresentation of facts in order to receive [benefits, services or payments ~~services~~], the local department must determine

whether or not fraud was committed. There must be clear and convincing evidence that demonstrates that the household or provider committed or intended to commit fraud. Suspected instances of child care fraud shall be referred to the fraud staff for investigation. If there is clear and convincing evidence that fraud has occurred [with either the provider or the household] , the case will be referred to the attorney for the Commonwealth to determine if the case will be prosecuted. If the [household's] case does not meet the criteria for prosecution as established by the attorney for the Commonwealth, the case will be referred for an administrative disqualification hearing.

2. Disqualification.

a. Parents will be disqualified from participating in the child care subsidy program for three months upon the first finding of child care fraud or an intentional program violation, 12 months upon the second finding, and permanently upon the third finding.

b. Providers will be permanently disqualified from participating in the child care subsidy program upon the first finding of child care fraud.

B. Repayment. In addition to any criminal punishment, anyone who causes the local department to make an improper ~~vendor~~ provider payment by withholding required information or by providing false information will be required to repay the amount of the improper payment.

~~C. Nonfraud overpayment. In cases of nonfraud overpayment, neither the parent nor provider will be disqualified from participating in the subsidy program, as long as a repayment schedule is entered into with the local department and payments are made according to that schedule. If an overpayment was made as result of an error by the local department, the local department will not seek to recoup these funds from the parent or the provider.~~

22VAC40-661-100. Administration.

A. Nonfraud overpayment. In cases of nonfraud overpayment, neither the parent nor provider will be disqualified from participating in the subsidy program as long as a repayment schedule is entered into with the local department and payments are made according to that schedule.

B. [Local department error. Overpayments. If an overpayment was made as a result of an error by the local department, the local department will not seek to recoup those funds from the parent or the provider. Any overpayments made as a result of a local department error must be refunded to the Department of Social Services with local-only funds. Any overpayment must be refunded to the department by the locality.]

FORMS (22VAC40-661)

[60 Month Lifetime Limit Letter (undated)

Absent Parent/Paternity Information (undated)

Attesting to the Lack of Information Form (undated)

Good Cause Communication Form, Child Care Subsidy Program (undated)

Notice of Cooperation and Good Cause (undated)

Administrative Disqualification Hearing Decision (undated)

Notice of Disqualification for Intentional Program Violation (undated)

Notice of Intentional Program Violation and Penalties]

DOCUMENTS INCORPORATED BY REFERENCE (22VAC40-661)

Child Care and Development Fund Plan for FFY 2004-2005, Department of Social Services, effective October 1, 2003.



COMMONWEALTH of VIRGINIA

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TO: MARGARET SCHULTZE, Commissioner
Virginia Department of Social Services

FROM: ERIC J. REYNOLDS *ER*
Assistant Attorney General

DATE: August 13, 2014

SUBJECT: New Regulation Section - 22 VAC40-661 (Child Care Subsidy Program)

I am in receipt of the attached regulations regarding the state Child Care Subsidy Program. You have asked the Office of the Attorney General to review and determine if the State Board of the Virginia Department of Social Services has the statutory authority to promulgate the proposed regulation and if the proposed regulation comports with applicable state and federal law.

This regulation is adding language and modifying some of the existing language to this Section - 22 VAC 40-661 - to include procedures related to the newly established statewide automation system for tracking child care attendance and payment to providers; new requirements for providers; limitations on fees and rates; requirement for recipients to cooperate with the Division of Child Support Enforcement; time limitation for receipt of Child Care assistance for Fee Child Care services; change in calculating a family's co-payment rate;

It is my opinion that the State Board of DSS has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA") and has not exceeded that authority.

It is my view that this regulation is not exempt from but is subject to the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(4)(a). If you have any questions or need additional information about these regulations, please contact me at 786-3450.

cc: Kim F. Piner, Esquire
Attachment